

**TESTIMONY BEFORE THE MICHIGAN HOUSE
NATURAL RESOURCES, TOURISM, AND OUTDOOR RECREATION
COMMITTEE**

~~MAY 29, 2012~~ June 5, 2012

Presented by:

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Good Morning Mr. Chairman and other distinguished members of this committee.

To frame my rational for encouraging you to vote for SB 1052 passage, I would like to start with our beach maintenance situation in my area [Refer to Slide #2] from Port Austin to Tawas prior to 2000 and then after 2000.

History Before 2000

About the only permits that were demanded along our shoreline by the DEQ and the Army Corps of Engineers (Army Corps) were for seawalls, boat houses, dredging permits for canals and marinas and set back requirements for home construction.

Beach maintenance activities shoreline property owners routinely performed on our beaches without permits included: mechanical removal of debris [Refer to Slide #4] fish hooks, plastic bottles, tin and aluminum cans, plastic bags, fishing line and etc); [Refer to Slides #5 & #6] mechanical movement of sand that accumulated during the winter [Refer to Slide #7], leveling [Refer to Slide #8] and cleaning of sand and removal of muck. [Refer to Slide #9]

History After 2000

DEQ sent out hundreds of letters [Refer to Slide #11] to shoreline property owners stating that they **owned** the area lakeward of the OHWM (580.5) and that the DEQ require that shoreline property owners obtain a permit to maintain their beach. This egregious action and bold face lie was accomplished despite 75+ years of Michigan Case Law to the contrary and the fact that our deeds show that we owned to the water's edge. [Refer to Slides 12 & 13]

In lockstep with the DEQ, the Army Corps sent out letters [Refer to Slide #14] stating that they exercise Federal Jurisdiction over bottomlands to the elevation of 581.5

feet and required a permit for all beach maintenance except the mowing of vegetation. The DEQ and Army Corps got together and informed us to send a joint DEQ/Army Corps permit to the DEQ. They also indicated that if we did not receive permits and continued to maintain the beach that court action would follow. When the Army Corps was asked, “Where is the law that requires such compliance?” the best they could provide to us was a memo from the Great Lakes and Ohio Division, not a published Federal Regulation nor could they cite a pertinent Federal Statute. Many of us started on our own legal research. To no surprise the elevation that was in the memo was incorrect [Refer to Slide #15] and has been acknowledged first by a Federal Court and since that time by the Army Corps of Engineers. [Refer to Slides #16 & 17] The OHWM under Federal Law is a fact determination activity and not a set elevation as asserted by the Corps. To me this means that the applications that were submitted and reviewed by both the DEQ and Army Corps personnel were unnecessary and hundreds of man-hours were wasted, tax dollars squandered and things of importance just did not get done.

Consequences of DEQ and Army Corps Actions

- Save Our Shoreline was formed [Refer to Slide #18]
- Thousands of shoreline property owners joined [Refer to Slides #19 & #20]
- Permits were requested by shoreline property owners –Delays of 6 months to a year were common
- Denial of Permits – Claiming Wetlands or area (beach) would under normal circumstances be vegetated. [Refer to Slide #21] The only vegetation we saw was Phragmites

- Law suits filed against at least three retired members of SOS [Refer to Slides #22, 23 & 24]
- Many Seniors were reluctant to fight so they let their property go wild [Refer to Slide #25] for fear of government retaliation
- Infections rates in Humans [Refer to Slide #26] and Pets increased – West Nile Virus
- Phragmites Flourished [Refer to Slide #24] Causing–
 - Wetlands to be destroyed. – Phragmites has replaced cattails[Refer to Slide #27] and other native plants –reducing wildlife habitat & diversity
 - Erosion of the taxable value on property
 - Restricting shoreline views
 - Reduction of shoreline access for swimming, hunting, fishing, boating and walking [Refer to Slides #28 & 29]
 - Creating fire /hazards from dry plant material. [Refer to Slide #30]
We have had over the past two years extensive fires from phragmites in the Quanicassee State Wildlife Area, Aburn Hills and other areas.
- PA 14 (2003) was passed permitting beach maintenance activities without a permit in our area [Refer to Slide #32]
- DEQ intentionally delayed a significantly flawed publication [Refer to Slide #33] of their directed study to see what damage was done by beach

grooming permitted under PA14 thus resulted in the law's sun setting provisions to take effect.

➤ SOS Panel of four Scientists (Two with PhDs in wetland science, one with a with a PhD and MD and one MS in wetland science) reviewed the DEQ study and found: [Refer to Slide #34]

- That despite the Legislature's directive, none of the research was specifically designed or undertaken for the purpose of evaluating the impacts of the maintenance activities as required under the law. Instead, it appears the study is simply a continuation of the MDEQ's interest in "wetland fragmentation.
- Misleading effect of data manipulation and analysis [Refer to Slide #35]
- Data sampling was not random; thereby, permitting the study to be biased
- Lack of perspective – much less than 1% of the coastline in Saginaw Bay was impacted
- Validity of referenced sites – initial design abandoned – contiguous referenced and treatment sites

In summary,

We cannot let agencies agenda over-ride the law and the will of the people.

SB 1052 will stop the state from wasting precious resources on beach maintenance issues and focus their attention on other areas that can best use their talent or reduce their budget accordingly.

Thank you for your kind attention towards this important Bill, and I trust that you will favorably consider passing SB 1052.